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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/931,218	08/16/2001	Ronald D. Key	LBPP-0004	3801
<div>7590 12/04/2007 MILLEN, WHITE, ZELANO & BRANIGAN, P.C. Suite 1400 2200 Clarendon Boulevard Arlington, VA 22201</div>			<div>EXAMINER NGUYEN, TAM M</div>	
			<div>ART UNIT 1797</div>	<div>PAPER NUMBER</div>
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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In re application of
Ron KEY et al.
Serial No. 09/931,218
Filed: August 16, 2001
For: PROCESS FOR C2 RECOVERY

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DECISION ON
PETITION

This is a decision on the PETITION FOR WITHDRAWAL OF FINALITY OF OFFICE ACTION UNDER 37 CFR 1.181 filed October 11, 2007.

A non-final rejection was mailed February 7, 2007. IN the non-final rejection claims 6 and 7 were rejected under 35 USC 112, and 35 USC 103 over U.S. Patent 6,712,880 to Foglietta. A response to the non-final rejection was filed on March 29, 2007. In this response it was argued that the U.S. Patent to Foglietta does not constitute prior art. Also, claims 8-24 were added. A final rejection was mailed June 7, 2007. In the final rejection, the 35 USC 103 rejection over U.S. Patent 6,712,880 to Foglietta was dropped. A rejection under 35 USC 102/103 over U.S. Patent 5,799,507 to Wilkinson was added. An amendment after final was filed September 7, 2007. In the amendment after final, several claim amendments were made and a request to withdraw the finality of the September 7, 2007 action was made. An advisory action was mailed September 19, 2007.

On October 11, 2007 the instant petition under 37 CFR 1.181 was filed to formally request the withdrawal of finality of the June 7, 2007 office action.

Applicants position for the withdrawal of the finality is that the new grounds of rejection in the final office action were not necessitated by Applicant's amendments to the claims but by the simple fact that the initial prior art rejection was undeniably improper because of the date of the reference.

DECISION

Section 706.07 of the MPEP states:

706.07(a) Final Rejection, When Proper on Second Action

Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

Petitioner's argument that the new grounds of rejection in the final office action were not necessitated by Applicant's amendments to the claims but by the simple fact that the initial prior art rejection was undeniably improper because of the date of the reference is persuasive. The new grounds of rejection over claims 6 and 7 were not necessitated by Applicant's amendment because the amendments to claims 6 and 7 simply appear to be in response to the the 35 USC 112 rejections set forth in the non-final rejection. The examiner's arguments in the advisory action do not clarify how the amendments to claims 6 and 7 necessitated the application of a new reference.

The finality of the office action mailed September 7, 2007 was improper and the petition for withdrawal of finality is **GRANTED**.

The application is being forwarded to the examiner for entry and consideration of the amendment filed September 7, 2007.



Jacqueline M. Stone, Director
Technology Center 1700
Chemical and Materials Engineering

MILLEN, WHITE, ZELANO & BRANIGAN, P.C.
Suite 1400
2200 Clarendon Boulevard
Arlington VA 22201